

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

GEORGE E. WALLACE,

Plaintiff,

v.

ACTION NO. 4:05cv39

ROSS A. KEARNEY, II,
individually and in his capacity as a member
of the Council for the City of Hampton,

CHARLES N. SAPP,
individually and in his capacity as a member
of the Council for the City of Hampton,

RANDALL A. GILLILAND,
individually and in his capacity as a member
of the Council for the City of Hampton,

ANGELA L. LEARY,
individually and in her capacity as a member
of the Council for the City of Hampton,
and

THE CITY OF HAMPTON, VIRGINIA,

Defendants.

ORDER

This matter comes before the court on the defendants' motion to dismiss all counts against Kearney, Sapp, Gilliland, and Leary in their official capacities, and motion to dismiss Count 3 of plaintiff's second amended complaint, for failure to state a claim upon which relief can be granted, filed November 18, 2005.

This matter was referred to United States Magistrate Judge James E. Bradberry, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 29 of the Local Rules of the United States District Court for the Eastern District of Virginia, for hearings and recommendations for the disposition of the motions.

A hearing was conducted and Report and Recommendation of the magistrate judge filed on February 9, 2006. The magistrate judge recommended that defendants' motion to dismiss all counts against Kearney, Sapp, Gilliland, and Leary in their official capacities be GRANTED, and that defendants' motion to dismiss Count 3, for failure to state a claim upon which relief can be granted, be DENIED.

By copy of the report and recommendation of the magistrate judge, the parties were advised of their right to file written objections thereto. On February 17, 2006, this court received Plaintiff's Objections to Magistrate Judge's Report and Recommendation. On March 2, 2006, this court received defendants' Brief in Opposition to Objection to Report and Recommendation.

The court, having examined the objections to the magistrate judge's Report and Recommendation and having made de novo findings with respect thereto, does hereby adopt and approve in full the findings and recommendations set forth in the Report and Recommendation of the magistrate judge filed February 9, 2006. Accordingly, the court GRANTS defendants' motion to dismiss all counts against Kearney, Sapp, Gilliland, and Leary in their official capacities, and DENIES defendants' motion to dismiss Count 3, for failure to state a claim upon which relief can be granted.

The Clerk shall forward a copy of this Order to counsel of record for plaintiff and defendants.

It is so ORDERED.

/s/

Rebecca Beach Smith

Norfolk, Virginia

March 14, 2006